

**OPINION  
51-176**

May 22, 1951           (OPINION)

**TAXATION**

**RE: Exemption of Farm Structures**

In your letter of May 17, 1951, you state that a problem has arisen relative to the construction of section 57-0208, NDRC, 1943, which reads in part as follows:

All property described in this section to the extent herein limited shall be exempt from taxation, that is to say:

\* \* \*

5. All farm structures, and improvements located on agricultural lands. This subsection shall be construed to exempt farm buildings and improvements only, and shall not be construed to exempt from taxation industrial plants, or structures of any kind not used or intended for use as a part of a farm plant, or as a farm residence."

You state that the facts upon which the controversy arose are as follows:

A resident of this city built a residence beyond the city limits, on approximately four acres of land, which land was once used as farm property although not so used at the present time. It is his (taxpayer's) contention that this is a farm and as such is exempt under the above statute."

You state that it is your opinion that the home built in the above case is not a farm residence as contemplated by the statute for the purpose of exemption.

This office agrees with your opinion and relies on the case which you set forth as the basis for your opinion in the matter. *Eisenzimmer v. Bell*, 75 N.D. 733, 32 N.W. 2d, 891.

In the above case, the court holds that statutes granting the privilege of tax-exemption must be strictly construed. Constitutional requirements of uniformity of taxation and equal protection are met when tax law operates on all alike under same circumstances and no greater burden is imposed on one person or species of property than another similarly situated or of like character.

Urban land is that situated in a city or town resembling a city while rural land is that located in the country in an agricultural district.

The question is one of actual fact, whether lands are urban or agricultural.

Where a tract is cultivated, produces the majority portion of the owner's income, and generally meets the usual concept of what is considered a farm in that community, then clearly it comes within the purview of agricultural land.

It is our opinion that a tract of four acres, which does not support the homestead, does not meet the test of agricultural lands, but is an urban estate and must be taxed as such.

ELMO T. CHRISTIANSON

Attorney General